

Captain Grovesnowr, Appellant.

Colonel Coy, Respondent.

In an Appeal to the House of P E E R S, from an Order of Dis-  
mission of the Appellant's Bill in the Court of Chancery.

## The Respondent's Case.

- September, 1688.* **T**HE Appellant Raised a Troop of Horse, for the late King James, in the Marquess De Meremont's Regiment, and had 1000 *l.* Advance for it, which was to consist of Fifty Men, Three Corporals, and Two Trumpets.
- January 3, 1688.* That Regiment and Troop was broken, and afterwards the Appellant's Troop cleared to that time, for the Pay and Off-reckonings, besides the 1000 *l.* Advance-Money.
- January 4, 1688.* Thirty Six of those Troopers, and no more, were, after their Breaking, admitted as Recruits in the Respondent's Regiment, and distributed among his Troops.
- August, 1689.* The Respondent's Regiment having their New Cloaths delivered to them (which were provided and got ready in May before) was Transported into Ireland, for the Reduction of that Kingdom, and afterwards into Flanders, and continued in that Service till the End of the War; and the Respondent hath Accounted and Answered, to the several Captains of his Regiment, for the whole Pay and Off-reckonings of their several Troops.
- The Appellant pretending that the 1000 *l.* Advance-Money was only for the buying of Horses, (tho' he never completed his Troop, nor were the Horses, one with another, worth more than Eight or Ten Pounds a-piece) and the Off-reckonings of his Troop, which came to 97 *l.* 3 *s.* 6 *d.* (which the King paid, with the rest of the Pay, to the Third of January, 1688.) were not sufficient to Discharge the Expences for the Cloaths and Accountments provided by him: Therefore,
- Michaelmas-Term, 1697.* The Appellant then, and not before, Exhibits his Bill in Chancery against the Respondent, for 286 *l.* 5 *s.* 7 *d.* to make up his Monies for those Expences, under Colour that the said Thirty Six Troopers Served with the same Cloaths and Accountments, provided by him, in the Respondent's Regiment; and that by the Rules of the King's Army, such Monies are to be paid out of the Off-reckonings.
- June 20, 1699.* The Cause was Heard before the Master of the Rolls, who Ordered and Decreed a Reference to a Master of that Court, touching several Matters in the Cause; who Certified, That he found the Appellant had laid out in the whole, for the Cloaths and Accountments, 320 *l.* 6 *s.* and that the Respondent received the Off-reckonings of his own Regiment, from the Fourth of January 1688, to the First of March 1690; and that those Off-reckonings ought to go for the New Cloathing and Accountments, and not for their Old Cloaths, &c. and were applied accordingly.
- January 4, 1700.* The Cause came again to be Heard on the Master's Report, and the Master of the Rolls Decreed the Respondent to pay the Appellant the 320 *l.* 6 *s.* from which Orders, Decrees and Proceedings, the Respondent Appealed to the Lord-Keeper.
- March 18, 1700.* His Lordship, after Hearing the Appeal, and taking Time to speak with some of the Generals of the Army, touching the Custom or Rules of the Army, in the Point in Question, declared, He had fully considered of the whole Matter, and saw no Cause, in Equity, to give the now Appellant Relief, and therefore Reversed the Master of the Rolls's Decree, and Dismiss'd the now Appellant's Bill; from which Order of Reversal and Dismission, the now Appellant Appeals to the House of Peers.
- Which Reversal and Dismission, the Respondent hopes will appear to be no other than Just, for that
- First,* The Appellant's Troop was absolutely broken, with other Troops, in Meremont's Regiment, the Third of January, 1688. After which, the Appellant had no Command or Power over those Men, but they were at Liberty to go where they pleased, with their Horses, Cloaths and Accountments, without being any ways Accountable for the same.
- Second,* There is no Rule in His Majesties Army, to oblige any Colonel, out of the Off-reckonings of his own Regiment, to Pay an Officer in the late King James's Army, or any other Person, for the Cloaths, &c. of any broken Regiment, or Troop, where any of those broken Troopers came afterwards to be Listed in his Majesties Army with those Cloaths; nor is there any one single Instance thereof.
- Third,* By the Rules of the Army, and several Acts of Parliament, the Colonel of every Regiment is to Account with his Captains, as well for the Subsistence-Money as the Off-reckonings, being 6 *d.* a Day for a Trooper, whereof 1 *d.*  $\frac{1}{2}$  is for Poundage and Agency; and out of the remaining 4 *d.*  $\frac{1}{2}$  the Cloaths, &c. provided in the same Regiment, are to be Discharged. And if there be any Overplus, it belongs to the Soldier. And in this manner, the Colonels and Captains, from time to time, must Answer the Pay when received, and the Respondent hath accordingly Accounted with the respective Captains of his Regiment, and hath none of these Off-reckonings in his Hands.
- Fourth,* The King's Paying the Disbanded Forces of the late King James, to the time of their being Disbanded, and leaving to each Officer the Advance-Money he received, and no Order taken for any more, it must be intended that such Officer was to be satisfied therewith, and to expect nothing further.
- Fifth,* It seems Absurd and Mischievous, to Subject a Colonel to any such Demand as the Appellant pretends to, for receiving Disbanded Soldiers, with the Cloaths brought along with them, to fill up the Vacancies in His Majesties Army, for the Colonel cannot be supposed to know the same. And if a Colonel should be liable, it will be a means to hinder the Recruiting His Majesties Army with Experienced Men, or else those Men must not be Cloathed with the rest of the Regiment, unless it be out of the Colonel's own Pocket; neither of which can be supposed Reasonable.
- Sixth,* Whatever the Appellant may pretend, he cannot be a Loser, but must needs be a considerable Gainer, by the Raising his Troop; but if it were otherwise, he ought not to Charge the Respondent (who never received one Penny of the Pay or Off-reckonings of Meremont's Regiment, or any other Monies belonging to the Appellant.)

Jo. Hawles,  
John Squibb.

*The Respondent Humbly Hopes their Lordships will be pleased to Confirm the Lord Keeper's Order and Decree, and Dismiss the now Appellant's Appeal, and Award Costs in respect of the same.*